

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201500215	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 01/08/2015 9:49 PM	Location of Incident: 151st Street and Jackson Avenue, and 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 7/8/2016	EO SOL 7/8/2016	
Date/Time CV Reported Mon, 01/12/2015 7:53 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 01/12/2015 7:53 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Zanca	16771	952366	040 PCT
2. POM Sherrod Stuart	28290	952271	040 PCT
3. POM Saul Quilesmorales	05235	952136	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Besemah Rogers	00000	937419	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Saul Quilesmorales	Abuse: At 151st Street and Jackson Avenue PO Saul Quilesmorales stopped the car in which § 87(2)(b) was an occupant.	
B.POM John Zanca	Abuse: At 151st Street and Jackson Avenue PO John Zanca interfered with § 87(2)(b)'s ability to record the incident.	
C.POM Sherrod Stuart	Abuse: At 151st Street and Jackson Avenue PO Sherrod Stuart frisked § 87(2)(b)	
D.POM Sherrod Stuart	Abuse: At 151st Street and Jackson Avenue PO Sherrod Stuart searched § 87(2)(b)	
E.POM John Zanca	Abuse: At 151st Street and Jackson Avenue PO John Zanca frisked § 87(2)(b)	
F.POM John Zanca	Abuse: At 151st Street and Jackson Avenue PO John Zanca searched § 87(2)(b)	
G.POM John Zanca	Abuse: En route to the 40th Precinct stationhouse PO John Zanca did not obtain medical treatment for § 87(2)(b)	
H.POM Saul Quilesmorales	Abuse: En route to the 40th Precinct stationhouse PO Saul Quilesmorales did not obtain medical treatment for § 87(2)(b)	
I.POM Sherrod Stuart	Abuse: En route to the 40th Precinct stationhouse PO Sherrod Stuart did not obtain medical treatment for § 87(2)(b)	
J.POM John Zanca	Discourtesy: En route to the 40th Precinct stationhouse PO John Zanca spoke rudely to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K.POM John Zanca	Force: At the 40th Precinct stationhouse PO John Zanca used physical force against § 87(2)(b)	
L.POM Saul Quilesmorales	Force: At the 40th Precinct stationhouse PO Saul Quilesmorales used physical force against § 87(2)(b)	
M.POM Sherrod Stuart	Force: At the 40th Precinct stationhouse PO Sherrod Stuart used physical force against § 87(2)(b)	

### Case Summary

At approximately 9:50 pm on January 8, 2015, § 87(2)(b) was riding in the front passenger's seat of his friend § 87(2)(b)'s black 2011 Mercedes-Benz. § 87(2)(b) was driving and his sister, § 87(2)(b), § 87(2)(b) rode in the rear passenger's seat. PO Saul Quiles-Morales, PO John Zanca, and PO Sherrod Stuart stopped § 87(2)(b)'s vehicle at the intersection of 151<sup>st</sup> Street and Jackson Avenue (**Allegation A**).

As PO Quiles-Morales discussed the tint level of the vehicle's windows with § 87(2)(b), § 87(2)(b) used his smartphone, with its flashlight on, to film the encounter. § 87(2)(b) recorded two videos of the incident, which he provided to the investigation. He shined the light at PO Quiles-Morales and PO Quiles-Morales asked him to stop shining the light in his face. Unsure of how to use his new phone and afraid, he accidentally shined the light in PO Zanca's face. PO Zanca knocked the phone from § 87(2)(b)'s hand, thus interfering with § 87(2)(b)'s ability to record the incident (**Allegation B**).

PO Zanca asked § 87(2)(b) to exit the vehicle and walk to the rear, which he did. There, PO Stuart and PO Zanca each allegedly frisked and searched § 87(2)(b) (**Allegations C, D, E, and F**) and recovered a canister of pepper spray from his jacket pocket. § 87(2)(b) was warned and admonished for his window tints and was allowed to leave without a summons. § 87(2)(b) was handcuffed and placed in the rear of the RMP.

On the way to the 40<sup>th</sup> Precinct stationhouse PO Zanca allegedly lit a cigarette. § 87(2)(b) told the officers that he suffered from asthma, and said, "I need medical attention right now." The officers did not bring him to the hospital, and instead proceeded to the 40<sup>th</sup> Precinct stationhouse (**Allegations G, H, and I**). PO Zanca allegedly said to § 87(2)(b) "I don't care about your fucking life" (**Allegation J**).

When the RMP arrived at the 40<sup>th</sup> Precinct stationhouse an officer asked § 87(2)(b) to exit the vehicle. § 87(2)(b) felt panicked and could not move, and told the officers so. PO Quiles-Morales, PO Zanca, and PO Stuart together grabbed § 87(2)(b), pulled him out of the RMP, and dropped him on the ground so that he landed on his knees (**Allegations K, L, and M**). Because § 87(2)(b) could not walk, the officers carried him into the 40<sup>th</sup> Precinct stationhouse. § 87(2)(b) was then released with a summons for the possession of pepper spray.

### Mediation, Civil, and Criminal Histories

- This complaint was deemed unsuitable for mediation on the grounds that during a phone conversation on January 16, 2015 (recorded in an audio filed linked to IA # 7), § 87(2)(b) stated he was seeking an attorney and planned to file suit. On May 20, 2015 the Office of the Comptroller notified that undersigned investigator that § 87(2)(b) had not filed a Notice of Claim in regards to this incident. § 87(2)(b), § 87(2)(a) 160.50

### Civilian and Officer CCRB Histories:

- § 87(2)(b)

- This is § 87(2)(b)'s first CCRB complaint (04. Board Review).
- PO Zanca has been a member of the NYPD for three years and has been a subject in three additional cases (05. Board Review). In CCRB case # 201209672 it was alleged that he pushed an individual onto and then into an RMP. § 87(2)(g).
- PO Quiles-Morales has been a member of the NYPD for three years and has been a subject in two additional cases § 87(2)(g) (06. Board Review).
- PO Stuart has been a member of the NYPD for three years and has been a subject in four additional cases (07. Board Review). No allegations have been substantiated against him § 87(2)(g).

#### **Potential Issues:**

- § 87(2)(b), § 87(2)(g)
- § 87(2)(b), § 87(2)(b) could not be contacted for a statement.

#### **Investigative Findings and Recommendations:**

##### **Allegation A—Abuse of Authority: At 151<sup>st</sup> Street and Jackson Avenue PO Saul Quilesmorales stopped the car in which § 87(2)(b) was an occupant.**

PO Quiles-Morales (08. Board Review) was operating the RMP prior to the stop. He spotted § 87(2)(b)'s vehicle first and, due to his inability to see into the vehicle through its side windows, made a visual estimate that the window's tints were illegal. He testified that it was his decision to stop § 87(2)(b)'s vehicle and the first video recorded by § 87(2)(b) (09. Board Review) confirms that PO Quiles-Morales made statements about § 87(2)(b)'s dark tints. PO Zanca (10. Board Review) agreed with PO Quiles-Morales that the windows of § 87(2)(b)'s vehicle appeared to be tinted illegally. He believed that his automotive crime training had prepared him to make such a visual estimate.

§ 87(2)(b) (11. Board Review) stated that his windows are tinted and, further, that although he believed his tints were legal, he nonetheless was not surprised that the officers believed them to be illegal. He stated that he has an all-black car with a black interior and because it was night time he understood why his window tints appeared darker than they actually were.

§ 87(2)(b), § 87(2)(g)

**Allegation B—Abuse of Authority: At 151st Street and Jackson Avenue PO John Zanca interfered with § 87(2)(b)'s ability to record the incident.**

§ 87(2)(b) (12. Board Review) alleged that PO Zanca slapped the phone from his hand, knocking it to the floor of the vehicle. It is undisputed among § 87(2)(b) PO Zanca, PO Quiles-Morales, PO Stuart (13. Board Review), and § 87(2)(b) that while recording the incident, § 87(2)(b) shined his smartphone's flashlight into the face of PO Quiles-Morales, who stood at the front driver's side window. PO Quiles-Morales told him at least once to stop shining the light into his face. It is similarly undisputed that § 87(2)(b) then shined the light into the face of PO Zanca, who stood at the front passenger's side window, directly adjacent to § 87(2)(b) and that PO Zanca also asked § 87(2)(b) at least once to stop shining the light into his face.

Though PO Stuart did not recall, PO Zanca and PO Quiles-Morales both maintained that no officer ever slapped or otherwise knocked the phone from § 87(2)(b)'s hand. Neither PO Stuart, PO Zanca, nor PO Quiles-Morales remembered exactly how or at what point before exiting the vehicle § 87(2)(b) ceased shining the light into the officers' faces. Both PO Stuart and PO Quiles-Morales believed that § 87(2)(b)'s shining a light into the faces of police officers during a car stop constituted Obstruction of Governmental Administration.

In the first video recorded by § 87(2)(b) PO Quiles-Morales was visible standing at the driver's window speaking with § 87(2)(b). Both PO Quiles-Morales and § 87(2)(b) were illuminated by the phone's flashlight. PO Quiles-Morales looked at the passenger's side and said, "Do me a favor—stop flashing me with the light." § 87(2)(b) briefly aimed the camera at the floor on the passenger's side and then towards the passenger's side window, through which PO Zanca's dark-blue shirt was visible. PO Quiles-Morales said, "What's wrong with you, man? Would you like him to do that to you if you got stopped in the car?" § 87(2)(b) then aimed the camera at the glove compartment, away from PO Zanca. The second video (14. Board Review) showed the camera aimed at the glove compartment and then quickly panned toward the passenger's side window. PO Zanca was again visible through the window, his face obscured by the glare of his flashlight pointed at § 87(2)(b)'s camera. The flashlight on § 87(2)(b)'s phone was pointed out the window at PO Zanca, who said, "My man, stop shining me—stop shining the light in my eyes, man." § 87(2)(b) said, "I'm not shining the light in your eyes," but continued to aim the camera and its flashlight out the window at PO Zanca. PO Zanca then reached his hand through the window toward the camera. The recording ended.

FINEST message #§ 87(2)(b) (15. Board Review) states that members of the public are legally allowed to record police interactions and that members of the service will not interfere with a person's use of recording devices to record police interactions by blocking or obstructing cameras or ordering the person to cease. However, persons may not interfere with police operations. Members of the service may take action only if the person interfered with the operation or the safety of the members of the service or the public.

Patrol Guide procedure 208-03 (16. Board Review) states that a person remaining in the vicinity of a stop or arrest shall not be subject to arrest for Obstructing Governmental Administration, unless the officer has probable cause to believe the person is obstructing governmental administration. According to New York State Penal Law 195.05 (17. Board Review), an individual is guilty of obstructing governmental administration when he or she intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or interference.

§ 87(2)(b), § 87(2)(g)

**Allegation C—Abuse of Authority: At 151st Street and Jackson Avenue PO Sherrod Stuart frisked** § 87(2)(b)

**Allegation D—Abuse of Authority: At 151st Street and Jackson Avenue PO Sherrod Stuart searched** § 87(2)(b)

§ 87(2)(b) alleged that PO Stuart frisked and searched him at the rear of § 87(2)(b)'s vehicle.

PO Zanca testified that after § 87(2)(b) exited the vehicle, he witnessed § 87(2)(b) touch an area on his front right jacket pocket more than once. Further, PO Stuart testified that he saw a visible bulge on § 87(2)(b)'s person. PO Stuart frisked the bulge, felt a hard object, searched the bulge, and recovered a 2" by 4.5" canister of pepper spray (18. Board Review).

Patrol Guide procedure 212-11 (19. Board Review) states that an officer is to conduct a frisk if s/he reasonably suspects that s/he or others are in danger of physical injury. Further, an officer is to conduct a search if the aforementioned frisk reveals an object which may be a weapon.

§ 87(2)(b), § 87(2)(g)

**Allegation E—Abuse of Authority: At 151st Street and Jackson Avenue PO John Zanca frisked** § 87(2)(b)

**Allegation F—Abuse of Authority: At 151st Street and Jackson Avenue PO John Zanca searched** § 87(2)(b)

§ 87(2)(b) maintained that at the rear of § 87(2)(b)'s vehicle PO Zanca frisked him and searched him by reaching inside his pants pockets, sweatshirt pockets, waistband, and into the crotch and rear of his pants.

§ 87(2)(b) stated that when § 87(2)(b) was brought to the rear of the vehicle, he remained in the car and PO Quiles-Morales stayed at the driver's side. § 87(2)(b) stated further that he looked in his rearview mirror and saw § 87(2)(b)'s back leaned against the trunk. He saw two officers with § 87(2)(b) but did not describe a search. He added that because it was dark out, he could not clearly see what took place.

PO Zanca and PO Quiles-Morales both testified that they did not remember if PO Zanca searched § 87(2)(b). PO Stuart did not remember where PO Zanca and PO Quiles-Morales were when he

searched § 87(2)(b) All three officers maintained that § 87(2)(b)'s canister of pepper spray was recovered as a result of PO Stuart's frisk and search, and not any action performed by PO Zanca.

§ 87(2)(g)

**Allegation G—Abuse of Authority: En route to the 40<sup>th</sup> Precinct stationhouse PO John Zanca did not obtain medical treatment for § 87(2)(b)**

**Allegation H—Abuse of Authority: En route to the 40<sup>th</sup> Precinct stationhouse PO Saul Quilesmorales did not obtain medical treatment for § 87(2)(b)**

**Allegation I—Abuse of Authority: En route to the 40<sup>th</sup> Precinct stationhouse PO Sherrod Stuart did not obtain medical treatment for § 87(2)(b)**

It is undisputed among § 87(2)(b) PO Zanca, PO Quiles-Morales, and PO Stuart that the three officers transported § 87(2)(b) directly to the 40<sup>th</sup> Precinct stationhouse.

§ 87(2)(b) maintained that en route to the 40<sup>th</sup> Precinct stationhouse PO Zanca, seated in the front passenger's seat, lit a cigarette. § 87(2)(b) handcuffed in the rear, asked PO Zanca to put out the cigarette and told the three officers that he suffered from asthma. § 87(2)(b) did not allege that he suffered from any asthma symptoms during the incident. PO Zanca did not stop smoking the cigarette and the smoke accumulated in the rear of the vehicle. § 87(2)(b) maintained that he stated loudly, "I need medical attention right now." PO Zanca allegedly laughed in response, and PO Quiles-Morales allegedly said, "You're going to jail, not a hospital."

Neither PO Zanca nor PO Stuart recalled if PO Zanca lit a cigarette inside the RMP, if § 87(2)(b) announced that he suffered from asthma, if § 87(2)(b)'s requested that PO Zanca put out his cigarette, or if § 87(2)(b) stated that he needed medical attention. PO Zanca stated that he is a cigarette smoker. He also stated that if a prisoner requested medical attention, he would assess the severity of that prisoner's medical condition and would then render a judgment as to whether there was truly an urgent need for such attention. If he judged that such a need existed, he would immediately transport that prisoner to a hospital.

PO Quiles-Morales testified that PO Zanca never lit a cigarette inside the RMP and that § 87(2)(b) did not tell any officer that he suffered from asthma. Finally, he testified that § 87(2)(b) never requested medical attention at any point during the incident.

PO Zanca indicated that he would not necessarily take someone to the hospital unless he thought it was necessary, and not merely upon request. § 87(2)(b), § 87(2)(g)

**Allegation J—Discourtesy: En route to the 40<sup>th</sup> Precinct stationhouse PO John Zanca spoke rudely to § 87(2)(b)**

§ 87(2)(b) alleged that after he requested medical attention, PO Zanca said to him, “I don’t care about your fucking life.”

PO Stuart did not recall if PO Zanca ever uttered this statement, and PO Zanca and PO Quiles-Morales both maintained that PO Zanca never did. PO Zanca and PO Quiles-Morales both testified that § 87(2)(b) remarked that he approved of the murders of PO Wenjian Liu and PO Rafael Ramos on December 20, 2014. It is therefore likely that PO Zanca was angry with § 87(2)(b).

§ 87(2)(g)

**Allegation K—Force: At the 40th Precinct stationhouse PO John Zanca used physical force against § 87(2)(b)**

**Allegation L—Force: At the 40th Precinct stationhouse PO Saul Quilesmorales used physical force against § 87(2)(b)**

**Allegation M—Force: At the 40th Precinct stationhouse PO Sherrod Stuart used physical force against § 87(2)(b)**

§ 87(2)(b) maintained that upon the RMP’s arrival at the 40<sup>th</sup> Precinct stationhouse, one of the three officers opened the rear door of the RMP and ordered him to get out. § 87(2)(b) responded that he could not move, and did not exit the vehicle. PO Zanca, PO Quiles-Morales, and PO Stuart allegedly took hold of § 87(2)(b) and pulled him from the car. The three officers then allegedly released their holds on § 87(2)(b)’s person and dropped him to the ground so that he fell to his knees, scraping them. § 87(2)(b) stated there were no witnesses present outside the stationhouse.

Neither PO Stuart nor PO Zanca recalled whether § 87(2)(b) exited the RMP outside the 40<sup>th</sup> Precinct stationhouse of his own power or if he was pulled from it by force. Neither recalled dropping § 87(2)(b) to the ground.

PO Quiles-Morales testified that neither he, PO Zanca, nor PO Stuart ever took hold of § 87(2)(b)’s person, pulled him by force from the rear of the RMP, or dropped him to the ground. Rather, § 87(2)(b) exited the RMP of his own power and walked into the stationhouse.

Medical records received from § 87(2)(b) hospital indicate that § 87(2)(b) visited the hospital on the following evening complaining of a sore throat and pain in his wrists, left shoulder, and left hand. There is no record of any injury to his knees or suggestion that he ever mentioned such an injury while at § 87(2)(b) Hospital.

§ 87(2)(b), § 87(2)(g)



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Pod: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date